

Serial No. 10/047,586

Atty Docket No. SUE-001-US

**Remarks:****35 U.S.C. 102(b)**

Claims 1, 2, 4, 9, 10, 16, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,771,771 to Gagliardi, Jr. ('771). As positively claimed in the claims given above, each of the plurality of blades is substantially laterally aligned at an outermost portion thereof with a respective outermost portion of each of the remaining plurality of blades.

Applicant respectfully notes that '771 describes blades 38 that are provided in two or more tiers as described at column 3, line 53 through column 4, line 17, for example. As shown in the figures, the two or more tiers are oriented at different positions along the length of the apparatus 10.

Accordingly, there is simply no lateral alignment of all of the blades at an outermost portion of the blades as required in the present claims. Stated another way, each of the blades 38 are not aligned side by side with another respective blade at an outermost portion thereof. Because the two tiers occupy different longitudinal positions, they can in no way satisfy lateral alignment at outermost portions of the blade.

With regard to claims 9 and 10, '771 does not describe blades 38 that are fixed to the inner wall thereby preventing movement of the blades.

Applicant therefore respectfully traverses the rejections under 35 U.S.C. 102(b), for neither Gagliardi ('771), nor any other reference of record describes with particularity the present limitations. Nor does '771 either alone or taken with another reference of record describe, suggest, or otherwise motivate one of ordinary skill in the art to form an article as claimed or to slice a food product as claimed. For none of the references when taken alone or in combination describe all of the limitations of the claims.

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**35 U.S.C. 103(a)****Gagliardi '771**

Claims 1, 2, 4, 9, 10, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gagliardi. Applicant takes the position that the Office has not stated a prima facie case of obviousness. In particular, the references when taken alone or together must with particularity state all of the limitations of the claims. As noted by the examiner, the blades 38 of '771 exist in at least two tiers and are therefore not laterally aligned. Nevertheless, the examiner indicates that it would have been obvious to one of ordinary skill in the art to remove one of the tiers of blades of '771. The examiner, however, has not pointed to the requisite motivation to do the same.

In fact, '771 indicates that two or more tiers reduce the cutting pressure against the food product thereby requiring less force to cut the hot dog. See column 3, line 53 through column 4, line 17 of '771, herein incorporated by reference. Accordingly, '771 teaches away from laterally aligning the blades 38, or stated another way, from eliminating one of the two tiers of blades 38. Elimination of one of the tiers would be counterintuitive to one of ordinary skill given the comments by Gagliardi.

With regard to claims 9 and 10, Applicant incorporates the comments given above by reference. Further, Applicant has amended the claims to indicate that the blades do not move at all. Gagliardi does not describe blades that are fixed to an inner wall 20 because the blades 38 are free to slide along the length of the apparatus 10 as shown in the Figures 1 and 2, for example.

With regard to claims 16 and 17, Applicant incorporates the comments given above by reference. Applicant notes the examiner's acknowledgement that the blades 38 '771 are slidably engaged along the length of the wall 20 and apparatus 10. Applicant again emphasizes that Gagliardi simply does not

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describe a plurality of blades wherein each blade is laterally aligned with outermost portions of the other blades.

Accordingly, Applicant traverses the rejection of the claims under 35 U.S.C. 103(a) in view of Gagliardi, for a prima facie case of obviousness has not been stated.

**Gagliardi in view of Berler**

Claims 6, 7, 13, and 14 are rejected under 35 U.S.C 103(a) as being unpatentable over Gagliardi in view of Berler. Applicant takes the position that As noted above, Gagliardi does not describe a cutting device with a single plurality of blades whereby each blade has an outermost portion substantially laterally aligned with respective outermost portions of the remaining blades. The inherent advantages of such a device includes manufacturing simplification with reduced costs and reduced parts, while still providing a sliced product. With regard to claims 6 and 7, Berler does not resolve the deficiencies of Gagliardi as described above, for neither Berler nor Gagliardi when taken alone or combined describe a plurality of blades laterally aligned at outermost portions of the blades. With regard to claims 13 and 14, Berler does not resolve the deficiencies of Gagliardi, for the present plurality of blades are fixed to the side wall thereby preventing movement of the blades.

In sum, all of the limitations of the claims are neither described nor suggested either alone or in combination with any of the references, and therefore a prima facie case of obviousness is simply not supported. Furthermore, there is no motivation found in either reference to combine one with the other. The requisite motivation to combine must be found within the references when asserting a prima facie case of obviousness.

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**Pesce in view of Berler**

Claims 1, 2, 4, 6, 9, 10, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pesca in view of Berler, and apparently further in view of Gagliardi or Aguerrevere et al. Applicants take the position that the examiner has not shown the requisite motivation to combine the references. Specifically, Pesca does not provide any suggestion or motivation to provide an elongated housing wherein the length is greater than the diameter. There must be some suggestion or motivation within the reference to show the requisite motivation to combine. The examiner has not with particularity stated the reason or motivation to combine. In essence, Pesca does not recognize the need to provide a support for the hotdog within the apparatus and therefore does not contemplate an elongated body for support of an elongated food body, in accordance with the present invention.

As discussed in column 1, lines 38-40, Pesca states that it is an object of the invention to provide a cutter for hot dogs and the like which is of a simple and economical construction. Certainly, providing an elongated housing as claimed in the present invention is counterintuitive with regard to the design that Pesca describes. Accordingly, Pesca actually teaches away from providing a construction that is more complex and/or expensive than what he describes. It will be appreciated that the present elongated hollow body requires more raw material and is therefore more expensive.

It should further be emphasized that the blades 14 of Pesca are not fixed to prevent movement and in fact rotate with collar 13. See column 3, lines 1-10, for example.

Claims 6, 7, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pesca in view of Berler. Applicant takes the position that a prima facie case of obviousness with regard to claims 6 and 7 has not been shown. Regarding claims 6 and 7, Applicant again notes that neither Pesca nor

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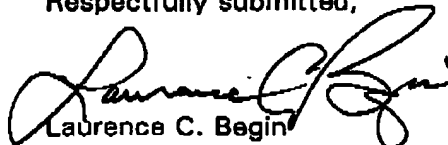
Berler describe a hollow body having a length greater than its diameter (e.g. elongated). Nor, as explained above, is there any suggestion or motivation within Pesce to combine a reference that describes an elongated housing. The comments given above are equally applicable here and are incorporated by reference. In essence, neither Pesce nor Berler describes an elongated housing, or a body having a length greater than the diameter. Accordingly, a prima facie case of obviousness has not been stated.

With regard to claims 13 and 14, Applicant takes the position that the current amendments define fixed blades that prevent movement of the blades. Pesce describes blades 14 that rotate within a collar 13. It will further be appreciated that again, with regard to the length being greater than the diameter, Pesce does not suggest or motivate one of ordinary skill in the art to change his housing to the elongated body of the present invention.

In sum, Applicant respectfully traverses the rejections given for the reasons stated.

Accordingly, the allowance of claims 1, 2, 4, 6, 7, 9, 10, 13, 14, 16, and 17, and passage of the subject application to issue is courteously solicited. Applicant has not calculated a fee to be due in connection with this paper. If the Applicant may be of any further assistance in the prosecution of this Application, the Examiner is invited to contact the undersigned at (248) 889-5875.

Respectfully submitted,



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